



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,282	02/17/2004	Charles L. Deschenes	81204D3	7074
23685 7590 11/10/2009 KRIEGSMAN & KRIEGSMAN 30 TURNPIKE ROAD, SUITE 9 SOUTHBOROUGH, MA 01772			EXAMINER VARGOT, MATHEU'D	
			ART UNIT	PAPER NUMBER
			1791	
			MAIL DATE	DELIVERY MODE
			11/10/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/780,282

Applicant(s)

DESCHENES ET AL.

Examiner

Mathieu D. Vargot

Art Unit

1791

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 70-80,82 and 83 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 70-80,82 and 83 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-85/86)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Art Unit: 1791

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 70-76 82 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mello et al in view of Williams et al essentially for reasons of record as set forth in paragraph 1 of the previous action with these additional comments.

Applicant has cancelled claim 81 requiring the first and second elements of each web to be made of a rigid plastic material and placed this limitation into independent claim 70. Independent claim 75 has been likewise amended to include this limitation. However a close reading of the primary reference shows that such is either taught therein or clearly obvious thereover. Note that Mello et al refers to part numeral 36 as a lid or cover and part numeral 30 as a tray or container—see col. 3 lines 59-61. At col. 1, lines 13-15, the exact nature of such elements are disclosed in relation to a discussion of the prior art. Namely, they constitute a rigid container as the tray portion (30) and a rigid plastic or foil top as the cover. Clearly, if Mello et al appreciates that these elements are known in the prior art as rigid plastics that are subsequently sealed, then it would have been obvious to have used such rigid plastics as the first and second elements of each web in the inventive process of Mello et al. Mello et al is also teaching the equivalence of sealing a rigid top to a rigid container or a foil top to a rigid

Art Unit: 1791

container in the discussion of the prior art, since the same machines are used to seal these elements. Hence, one of ordinary skill in the art would expect that flexible or foil lids would be sealed in the same manner as rigid tops. It clearly would have been obvious to have made the container of Mello et al from two rigid plastic elements. Williams et al is applied for reasons of record, teaching the equivalence of roller nips and opposed platens. Although Williams et al may be laminating a flexible plastic, Mello et al has already shown the equivalence in the art of flexible or rigid tops. Also, applicant should be well aware that the terms "rigid" and "flexible" are relative and would be subject to a certain degree of interpretation in the art.

2. Claims 77-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mello et al in view of Williams et al and Andersen, III et al for reasons of record as set forth in paragraph 2 of the previous action and paragraph 1, *supra*.

3. Applicant's arguments filed June 19, 2009 have been fully considered but they are not persuasive. Applicant submits that Mello et al does not teach both elements of the package being made out of a rigid plastic. While certain parts of the disclosure of Mello et al are directed to a foil cover, the reference also teaches rigid plastic tops and that such would be sealed to rigid containers using similar equipment as that employed in sealing foil tops to rigid container bottoms. Hence, it is submitted that one of ordinary skill in this art would understand that a rigid plastic would have been substituted for a foil as the top element. Also, it would appear from the discussion of the prior art in Mello et al

Art Unit: 1791

that processes and machines used to seal rigid containers to rigid tops would also be used to seal rigid containers to flexible foil tops. Hence, the combination with Williams et al is submitted to be valid. It is immaterial that Williams et al packages a substance different than that packaged in Mello et al. One of ordinary skill in the art would recognize that different materials would be placed in whatever packaging deemed to be most expeditious.

4.THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

5.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176.

Art Unit: 1791

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
November 5, 2009

/Mathieu D. Vargot/
Primary Examiner, Art Unit 1791